

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
James F. O'Brien (JFO-6722)
3 Gannett Drive
White Plains, New York 10604
Tel: (914) 323-7000
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SUSAN BRESCIA,

Plaintiff,

NOTICE OF MOTION

-against-

Case No: 05 Civ. 7948 (CLB)

CEIL SIA AND TOWN OF GREENBURGH,

Defendants.

PLEASE TAKE NOTICE, that upon the Affidavit of James F. O'Brien, sworn to on June 6, 2006, with the exhibits attached thereto, and the Affidavit of Ceil F. Sia, sworn to on June 5, 2006, pursuant to Local Civil Rule 56.1, the Memorandum of Law, and upon all the pleadings heretofore filed in this action, defendants Ceil Sia and Town of Greenburgh, by their attorneys Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, will move this Court before the Honorable Charles L. Brieant at the Courthouse located at 300 Quarropas Street, White Plains, New York, 10601-4150 on June 19, 2006, for an order granting summary judgment pursuant to Rule 56 with respect to all of plaintiff's claims, and for such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that opposition papers are to be served by June 14, 2006.

Dated: White Plains, New York
June 6, 2006

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP

By: James F. O'Brien
James F. O'Brien (JFO-6722)
Attorneys for Ceil Sia and Town of Greenburgh
3 Gannett Drive
White Plains, NY 10604
Tel: (914) 323-7000
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TO:
Michael H. Sussman, Esq.
Attorney for Plaintiff
P.O. Box 1005
Goshen, New York 10924

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SUSAN BRESCIA,	:	X
	:	
Plaintiff,	:	LOCAL CIVIL RULE 56.1
	:	STATEMENT
-against-	:	
CEIL SIA AND TOWN OF GREENBURGH,	:	Case No: 05 Civ. 7948 (CLB)
	:	
Defendants.	:	
	X	

Pursuant to Civil Rule 56.1 of the Local Rules of the United States District Court for the Southern District of New York, defendants Ceil Sia and Town of Greenburgh state that there is no genuine issue to be tried with respect to the following material facts:

1. Plaintiff became employed by the Town of Greenburgh as an Assistant Court Clerk on March 22, 2004. (Exhibit C, pp. 5-6).
2. Plaintiff's employment with the Town of Greenburgh was subject to a one year probationary period. (Exhibit C, pp. 48-49).
3. On or about March 25, 2004, plaintiff's fourth day of work, Ms. Sia (the Court Clerk) and Assistant Court Administrator Richard Santorsola met with the plaintiff concerning plaintiff's reporting for work late on 3 of her first 4 days of work and her inappropriate clothing. (Exhibit D).
4. On April 30, 2004, Ms. Sia met with plaintiff to discuss her failure to punch out on April 28, 2004. (Exhibit D).

5. On March 8, 2005, plaintiff was informed that her employment as an Assistant Court Clerk for the Town of Greenburgh was being terminated effective March 8, 2005. (Exhibit K).

Dated: White Plains, New York
June 6, 2006

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP

By: James F O'Brien
James F. O'Brien (JFO-6722)
Attorneys for Ceil Sia and Town of Greenburgh
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TO:
Michael H. Sussman, Esq.
Attorney for Plaintiff
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
SUSAN BRESCIA, :
: Plaintiff, : **AFFIDAVIT OF**
: : **JAMES F. O'BRIEN**
-against- :
CEIL SIA AND TOWN OF GREENBURGH, :
: Case No: 05 Civ. 7948 (CLB)
: Defendants. :
----- X

JAMES F. O'BRIEN, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of the law firm of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, attorneys for defendants Ceil Sia and Town of Greenburgh (collectively, the "Defendants). I am the attorney handling this matter.
2. I submit this affidavit in support of the motion for summary judgment made by the Defendants.
3. Annexed hereto as Exhibit "A" is a copy of the amended complaint in this action, dated October 12, 2005.
4. Annexed hereto as Exhibit "B" is a copy of the answer to the amended complaint on behalf of the Defendants, dated November 18, 2005.
5. Annexed hereto as Exhibit "C" is a copy of the Examination Before Trial of the Plaintiff Susan Brescia, taken on April 25, 2006.

6. Annexed hereto as Exhibit "D" is a March 25, 2004 typed memo with attachments and an April 30, 2004 handwritten memo.

7. Annexed hereto as Exhibit "E" is a two-page handwritten memo authored by Ceil Sia.

8. Annexed hereto as Exhibit F is a May 24, 2005 memo authored by Ceil Sia.

9. Annexed hereto as Exhibit G is a November 18, 2004 memo authored by Ceil Sia.

10. Annexed hereto as Exhibit H is a January 5, 2005 memo authored by Richard Santorsola.

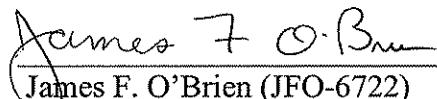
11. Annexed hereto as Exhibit I is a January 11, 2005 memo authored by Richard Santorsola.

12. Annexed hereto as Exhibit J is a February 5, 2005 memo authored by Ceil Sia.

13. Annexed hereto as Exhibit K is a March 8, 2005 letter authored by Cecile F. Sia.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: White Plains, New York
June 6, 2006



James F. O'Brien (JFO-6722)
3 Gannett Drive
White Plains, NY 10604
Tel: (914) 323-7000
Fax: (914) 323-7001



LAURIE PAYER
Notary Public, State of New York
No. 4945402
Qualified in Dutchess County
Commission Expires Dec 19, 2006

STATE OF NEW YORK)
 SS
COUNTY OF WESTCHESTER)

Cecile F. Sia, being duly sworn, deposes and states as follows:

1. I am employed by the Town of Greenburgh as the Court Clerk for the Town Court of Greenburgh. Susan Brescia was hired as an Assistant Court Clerk effective March 22, 2004. Her appointment was subject to a one year probationary period.

2. From the beginning of her employment, both myself and Assistant Court Administrator Richard Santorsola reprimanded Ms. Brescia on numerous occasions for, *inter alia*, performance problems, inappropriate attire, and failure to clock out at the end of the day.

3. Many, but not all, of Ms. Brescia's reprimands were memorialized in handwritten or typed memos.

4. Ms. Brescia never complained to me about mismanagement or similar problems at the Court, including ticket backlog, the failure to seal youthful offender files, failure to respond to requests for Certificates of Disposition, improper summonsing of defendants to court, or anything else of this nature.

5. When Ms. Brescia did complain to me about diesel fumes coming from a generator outside of the courthouse, I promptly forwarded her complaint to the Commissioner of the Greenburgh Department of Public Works for handling.

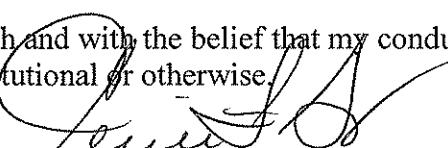
6. Due to the performance and other problems we were experiencing with Ms. Brescia, a decision was made to terminate her employment. While Ms. Brescia's termination had been contemplated and discussed as early as June-July of 2004, she was not terminated until much later. Specifically, by letter dated March 8, 2005, I advised Ms. Brescia that her probationary appointment to the position of Assistant Court Clerk was terminated effective March 8, 2005.

7. Ms. Brescia's termination was due to her performance and other problems, not because she allegedly spoke out on matters of a public concern/exercised her freedom of speech under the First Amendment or because of her union membership or role. Ms. Brescia would have been terminated even in the absence of her alleged complaints about mismanagement in the Court, etc.

8. At all times, I acted in good faith and with the belief that my conduct towards Ms. Brescia did not violate any of her rights, constitutional or otherwise.

6/5/06

James F O'Brien
Notary Public


Cecile F. Sia

JAMES FRANCIS O'BRIEN
NOTARY PUBLIC, State of New York
No. 60-4972680

1185850.1

Qualified in Westchester County
Commission Expires October 1, 2006

AFFIDAVIT OF SERVICE

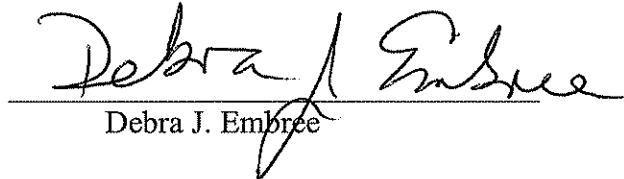
STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

Debra J. Embree, duly sworn, deposes, and says: that deponent is not a party to the action, is over 18 years of age and resides in Westchester County, New York.

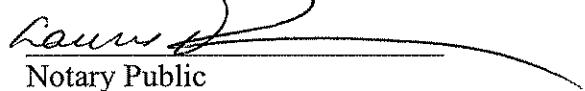
That on the 6th day of June, 2006, deponent served the within Notice of Motion, Local Civil Rule 56.1 Statement, Affidavit of James F. O'Brien and Supporting Exhibits upon attorney for plaintiff via Federal Express overnight delivery as follows:

Michael H. Sussman, Esq.
Law Offices of Michael H. Sussman
40 Park Place
Goshen, NY 10924

at the above noted address designated by said attorney for that purpose.


Debra J. Embree

Sworn to before me this 6th
day of June, 2006


Laurie Payer
Notary Public

LAURIE PAYER
Notary Public, State of New York
No. 4945402
Qualified in Dutchess County
Commission Expires Dec 19, 2006